

EDMUND G. BROWN JR., Attorney General
of the State of California
PAUL C. AMENT
Supervising Deputy Attorney General
E. A. JONES III, State Bar No. 71375
Deputy Attorney General
ELAINE GYURKO
Senior Legal Analyst
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 897-4944
Facsimile: (213) 897-9395

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation
Against:

JOE MUNOZ
5630 Temple City Boulevard, Apt. L
Temple City, California 91780

Respiratory Care Practitioner License No. 14010

Respondent.

Case No. R-2095 / D1 2005 205

**PETITION TO REVOKE
PROBATION**

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs (Board).
2. On or about January 18, 1991, the Board issued Respiratory Care Practitioner License Number 14010 to Joe Munoz (Respondent). This license expired on August 31, 2008, and has not been renewed.
3. In a disciplinary action entitled *In the Matter of the Accusation Against Joe Munoz*, Case No. R-2095, the Board issued a decision effective December 17, 2007, in which

1 Respondent's license was revoked. However, the revocation was stayed and Respondent's license
2 was placed on probation for three (3) years with certain terms and conditions. A copy of that
3 decision is attached as Exhibit A and incorporated herein by reference.

4 JURISDICTION

5 4. This Petition to Revoke Probation is brought before the Board under the
6 authority of the following laws. All section references are to the Business and Professions Code
7 (Code) unless otherwise indicated.

8 5. Section 3710 of the Code states: "The Respiratory Care Board of
9 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
10 8.3, the Respiratory Care Practice Act]."

11 6. Section 3718 of the Code states: "The board shall issue, deny, suspend,
12 and revoke licenses to practice respiratory care as provided in this chapter."

13 7. Section 3754 of the Code states: "The board may deny an application for,
14 or issue with terms and conditions, or suspend or revoke, or impose probationary conditions
15 upon, a license in any decision made after a hearing, as provided in Section 3753."

16 8. Section 118 of the Code provides that the expiration of a license issued by
17 a board shall not, during any period in which it may be renewed, deprive the board of its
18 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
19 provided by law or to enter an order revoking the license or taking disciplinary action against the
20 licensee.

21 COST RECOVERY

22 9. Section 3753.5, subdivision (a) of the Code states:

23 "In any order issued in resolution of a disciplinary proceeding before the board,
24 the board or the administrative law judge may direct any practitioner or applicant found to have
25 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
26 investigation and prosecution of the case."

27 10. Section 3753.7 of the Code states:

28 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall

1 include attorney general or other prosecuting attorney fees, expert witness fees, and other
2 administrative, filing, and service fees.”

3 11. Section 3753.1, subdivision (a) of the Code states:

4 “An administrative disciplinary decision imposing terms of probation may
5 include, among other things, a requirement that the licensee-probationer pay the monetary costs
6 associated with monitoring the probation.”

7 FIRST CAUSE TO REVOKE PROBATION

8 (Biological Fluid Testing)

9 12. At all times after the effective date of Respondent’s probation, Condition 3
10 stated:

11 Respondent, at his expense, shall participate in random testing, including, but not
12 limited to, biological fluid testing (i.e., urine, blood, saliva), breathalyzer, hair follicle
13 testing, or a drug screening program approved by the Board. Test costs range from
14 \$21.00 to \$200.00 each. The length of time shall be for the entire probation period. The
15 frequency and location of testing will be determined by the Board.

16 At all times, Respondent shall fully cooperate with the Board or any of its
17 representatives, and shall, when directed, appear for testing as requested, and submit to
18 such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs
19 or other controlled substances.

20 If Respondent is unable to provide a specimen in a reasonable amount of time
21 from the request, while at the work site, Respondent understands that any Board
22 representative may request from the supervisor, manager or director on duty to observe
23 Respondent in a manner that does not interrupt or jeopardize patient care in any manner,
24 until such time Respondent provides a specimen acceptable to the Board.

25 Failure to submit to testing or appear as requested by any Board representative for
26 testing, as directed, shall constitute a violation of probation, and shall result in the filing
27 of an accusation and/or a petition to revoke probation against Respondent’s respiratory
28 care practitioner license.

1 13. Respondent's probation is subject to revocation because he failed to
2 comply with Probation Condition 3, referenced above. The facts and circumstances regarding
3 this violation are as follows:

4 A. As part of Respondent's random drug testing program, he was required to
5 call the automated telephone system at Compass Vision, Inc. (CVI) on a daily basis to
6 determine if he needed to provide a specimen for testing and analysis. Respondent failed
7 to telephone CVI on the following dates: April 7 and 29, 2008; September 15 and 28,
8 2008; October 5, 7, and 14, 2008; November 4, 8, 9, 10, 17, 20, 21, 22, 23, 25, 27, 28, 29
9 and 30, 2008; December 1, 3, 4, and 6 through 31, 2008; January 1 through 31, 2009,
10 February 1 through 28, 2008, March 1 through 31, 2009, and April 1 through 30, 2009.

11 B. Respondent was scheduled to provide a specimen for testing and analysis
12 on March 11, 2008, November 3 and 26, 2008, December 11 and 23, 2008, January 6 and
13 20, 2009, February 17, 2009, and April 10, 2009. Respondent failed to provide a
14 specimen as directed.

15 SECOND CAUSE TO REVOKE PROBATION

16 (Quarterly Reports)

17 14. At all times after the effective date of Respondent's probation, Condition
18 8 stated:

19 Respondent shall file quarterly reports of compliance under penalty of perjury, on
20 forms to be provided to the probation monitor assigned by the Board. Omission or
21 falsification in any manner of any information on these reports shall constitute a violation
22 of probation and shall result in the filing of an accusation and/or a petition to revoke
23 probation against Respondent's respiratory care practitioner license.

24 Quarterly report forms will be provided by the Board. Respondent is responsible
25 for contacting the Board to obtain additional forms if needed. Quarterly reports are due
26 for each year of probation and the entire length of probation as follows:

27 For the period covering January 1st through March 31st, reports are to be
28 completed and submitted between April 1st and April 7th. For the period covering April

1 1st through June 30th, reports are to be completed and submitted between July 1st and July
2 7th. For the period covering July 1st through September 30th, reports are to be completed
3 and submitted between October 1st and October 7th. For the period covering October 1st
4 through December 31st, reports are to be completed and submitted between January 1st
5 and January 7th.

6 Failure to submit complete and timely reports shall constitute a violation of
7 probation.

8 15. Respondent's probation is subject to revocation because he failed to
9 comply with Probation Condition No. 8, referenced above, as follows:

10 Respondent failed to submit his quarterly report of compliance for the period
11 October 1 through December 31, 2008, which was due to the Board by January 7, 2009,
12 and for the period January 1 through March 31, 2009, which was due to the Board by
13 April 7, 2009.

14 THIRD CAUSE TO REVOKE PROBATION

15 (Probation Monitoring Costs)

16 16. At all times after the effective date of Respondent's probation, Condition 9
17 stated:

18 All costs incurred for probation monitoring during the entire probation shall be
19 paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or
20 increased. Respondent's failure to comply with all terms and conditions may also cause
21 this amount to be increased.

22 All payments for costs are to be sent directly to the Respiratory Care Board and
23 must be received by the date(s) specified. (Periods of tolling will not toll the probation
24 monitoring costs incurred.)

25 If Respondent is unable to submit costs for any month, he shall be required instead
26 to submit an explanation of why he is unable to submit the costs, and the date(s) he will
27 be able to submit the costs including payment amount(s). Supporting documentation and
28 evidence of why the Respondent is unable to make such payment(s) must accompany this

1 submission.

2 Respondent understands that failure to submit costs timely is a violation of
3 probation, and submission of evidence demonstrating financial hardship does not
4 preclude the Board from pursuing further disciplinary action. However, Respondent
5 understands providing evidence and supporting documentation of financial hardship may
6 delay further disciplinary action.

7 In addition to any other disciplinary action taken by the Board, an unrestricted
8 license will not be issued at the end of the probationary period and the respiratory care
9 practitioner license will not be renewed, until such time all probation monitoring costs
10 have been paid.

11 The filing of bankruptcy by Respondent shall not relieve the Respondent of his
12 responsibility to reimburse the Board for costs incurred.

13 17. Respondent's probation is subject to revocation because he failed to
14 comply with Probation Condition 10, referenced above. The facts and circumstances regarding
15 this violation are as follows:

16 Respondent is delinquent in his probation monitoring costs in the amount of
17 \$1,365.00 for the months of March 2008 through April 2009.

18 FOURTH CAUSE TO REVOKE PROBATION

19 (Cost Recovery)

20 18. At all times after the effective date of Respondent's probation, Condition
21 14 stated:

22 Respondent shall pay to the Board a sum not to exceed the costs of the
23 investigation and prosecution of this case. That sum shall be \$1,572.00 and shall be paid
24 in full directly to the Board, in equal quarterly payments, within 12 months from the
25 effective date of this decision. Cost recovery will not be tolled.

26 If Respondent is unable to submit costs timely, he shall be required instead to
27 submit an explanation of why he is unable to submit these costs in part or in entirety, and
28 the date(s) he will be able to submit the costs including payment amount(s). Supporting

1 documentation and evidence of why the Respondent is unable to make such payment(s)
2 must accompany this submission.

3 Respondent understands that failure to submit costs timely is a violation of
4 probation, and submission of evidence demonstrating financial hardship does not
5 preclude the Board from pursuing further disciplinary action. However, Respondent
6 understands that providing evidence and supporting documentation of financial hardship
7 may delay further disciplinary action.

8 Consideration to financial hardship will not be given should Respondent violate
9 this term and condition, unless an unexpected AND unavoidable hardship is established
10 from the date of this order to the date payment(s) is due.

11 The filing of bankruptcy by the Respondent shall not relieve the Respondent of his
12 responsibility to reimburse the Board for these costs.

13 19. Respondent's probation is subject to revocation because he failed to
14 comply with Probation Condition 14, referenced above. The facts and circumstances regarding
15 this violation are as follows:

16 Respondent is delinquent in his cost recovery in the amount of \$37.00.

17 FIFTH CAUSE TO REVOKE PROBATION

18 (Valid License Status)

19 20. At all times after the effective date of Respondent's probation, Condition
20 16 stated:

21 Respondent shall maintain a current, active and valid license for the length of the
22 probation period. Failure to pay all fees and meet Continuing Education requirements
23 prior to his license expiration date shall constitute a violation of probation.

24 21. Respondent's probation is subject to revocation because he failed to
25 comply with Probation Condition 16, referenced above. The facts and circumstances regarding
26 this violation are as follows:

27 Respondent's license expired on August 31, 2008, and has not been renewed.
28

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

4 1. Revoking the probation that was granted by the Respiratory Care Board of
5 California in Case No. R-2095;

6 2. Revoking or suspending Respiratory Care Practitioner License No. 14010
7 issued to Joe Munoz;

8 3. Ordering Joe Munoz to pay the Respiratory Care Board the costs of the
9 investigation and enforcement of this case, and if probation is continued or extended, the costs of
10 probation monitoring; and

11 4. Taking such other and further action as deemed necessary and proper.

12 DATED: May 1, 2009

13 Original signed by Colleen Whitestine for:

14 STEPHANIE NUNEZ

15 Executive Officer

16 Respiratory Care Board of California

17 Department of Consumer Affairs

18 State of California

19 Complainant